

**STATE WATER CONTROL BOARD ENFORCEMENT ACTION
A SPECIAL ORDER ISSUED TO
ROBERT W. CLAYTOR**

UST Facility at 314 West King Street, Strasburg, VA
Facility Identification No. 6015381

SECTION A: Purpose

This is a Special Order by consent issued under the authority of Va. Code §§ 62.1-44.15 (8a) and (8d) between the State Water Control Board and Robert W. Claytor to resolve certain violations of the State Water Control Law and regulations at Robert W. Claytor's Underground Storage Tank Facility located at 314 West King Street in Strasburg, Shenandoah County, Virginia.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. ABoard≡ means the State Water Control Board, a permanent citizen's board of the Commonwealth of Virginia as described in Code §§ 10.1-1184 and 62.1-44.7.
2. ACode≡ means the Code of Virginia (1950), as amended.
3. AUST≡ means underground storage tank as further defined in 9 VAC 25-580 10.
4. "Mr. Claytor" means Robert W. Claytor, the UST owner within the meaning of Virginia Code § 62.1-44.34:8.
5. ADepartment≡ or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.

6. ADirector≡ means the Director of the Department of Environmental Quality.
7. AFacility≡ means the retail gasoline station and USTs owned and operated by Mr. Claytor located at 314 West King Street, Strasburg, Shenandoah County, Virginia. The Facility=s USTs are further identified by UST numbers: 6, 7, 8, 9, 10, R1, R2, R3, R4M & R5M (R in the UST identifier means that it has been removed from the ground in January 2003)
8. AOrder≡ means this document, also known as a Consent Special Order.
9. ARegional Office≡ means the Valley Regional Office of the Department.
10. ARegulation≡ means 9 VAC 25-580-10 *et seq.* (Underground Storage Tanks: Technical Standards and Corrective Action Requirements) relating to upgrading of existing UST systems, registration of tanks, closure of non-compliant tanks, and release detection requirements.
11. “STI-P3 tank” means a UST certified by the Steel Tank Institute to have three different methods of corrosion protection.
12. “Form 7530” means the UST notification form used by the DEQ to register and track USTs for proper operation, closure and ownership purposes. See 9 VAC 25-580-70.

SECTION C: Findings of Fact and Conclusions of Law

1. The Regulation, at 9 VAC 25-580-10 *et seq.*, requires that the USTs at the Facility meet final, specific performance requirements for leak detection, spill and overfill protection, and corrosion protection by December 22, 1998.
2. Mr. Claytor is the owner of the USTs at this Facility within the meaning of Virginia Code § 62.1-44.34:8.
3. On January 28, 2002, DEQ staff conducted a formal inspection of the Facility. The following deficiencies were noted:
 - a. Release detection was not being performed on UST #R4M and its associated piping in apparent violation of 9 VAC 25-580-140 ¶1 & 2.
 - b. Automatic line leak detectors were not tested annually in apparent violation of 9 VAC 25-170 ¶1.

- c. USTs #R1, R2, R4M & R5M were not protected from corrosion in apparent violation of 9 VAC 25-580-60 ¶2.
- d. USTs #3 and 6 were not properly closed nor was closure documentation available for review in apparent violation of 9 VAC 25-580-320 & -330.
- e. Piping associated with USTs #R1, R2, R3, R4M, R5M, 6 & 7 was in contact with the ground and had not been protected from corrosion in apparent violation of 9 VAC 25-580-60 ¶3.
- f. UST notification information submitted on Form 7530 was incorrect in apparent violation of 9 VAC 25-580-70 ¶A.
- g. Facility maintenance and compliance records were not readily available for review by DEQ staff in apparent violation of 9 VAC 25-580-120 ¶3.
- h. Financial responsibility documentation had not been submitted to the DEQ in apparent violation of 9 VAC 25-590-150 ¶E.

As a result of this formal inspection, DEQ staff sent a Warning Letter (No. 02-02-VRO-11) to Mr. Claytor on April 17, 2002, for these apparent violations of the Regulations. The letter requested that Mr. Claytor respond by May 17, 2002, and included a copy of the formal inspection results, detailing the apparent violations noted above. It also requested that Mr. Claytor contact DEQ to discuss resolution of noncompliance by way of a Letter of Agreement.

- 4. On May 1, 2002, DEQ staff received:
 - copies of failing cathodic protection system test results for USTs #R1, R2, R4M & R5M, performed March 15, 2001. The test results also indicated a passing reading for what appears to be UST #7,
 - copies of passing line tightness and line leak detector functionality test for USTs R1, R2, R4M & R5M, performed on July 12, 2001,
 - copies of passing release detection results for USTs # R1, R2, R4M, R5M & 7 for the months of January , February and March 2002,
 - a Form 7530 containing incorrect and/or inconsistent information regarding the USTs, and
 - a letter communicating Mr. Claytor's intention to close all the USTs at the Facility.
- 5. On May 29, 2002, Mr. Claytor entered into a Letter of Agreement (LOA) with the DEQ requiring him properly close USTs # R1, R2, R3, R4M & R5M by August 15, 2002.

Additionally, it required that he submit an accurate Form 7530 for UST #7 and acceptable financial responsibility information for the Facility.

6. On March 5, 2003, DEQ staff received complete UST closure documentation for USTs # R1, R2, R3, R4M & R5M. Soil sampling results submitted with the documentation revealed a confirmed release of petroleum at the Facility, referenced by PC number 2003-6072. This release was properly investigated by Mr. Claytor and closed by DEQ staff on August 26, 2003.
7. On May 14, 2003, DEQ staff met with Mr. Claytor to review the outstanding violations with the Regulation at the Facility. Many of the violations previously noted in paragraph three were resolved as a result of the USTs # R1, R2, R3, R4M & R5M closures. During this meeting, Mr. Claytor submitted a corrected Form 7530 for these tank closures and a second Form 7530 correcting the registration information for UST #7. According to Mr. Claytor, Ust #7 is a 2,000-gallon STI-P3 tank. Mr. Claytor had previously registered UST #7 as a 1,000-gallon fiberglass UST in on May 31, 1997, and then again as a 2,000-gallon fiberglass UST on April 26, 2002. DEQ staff did not receive supporting documentation regarding UST #7's material of construction.
8. On July 23, 2003, DEQ staff issued NOV No. 03-07-VRO-1 to Mr. Claytor, for the apparent continuing violation of the Regulation regarding USTs #7. The NOV requested that Mr. Claytor respond to the Department by August 4, 2003.
9. On August 9, 2003, DEQ staff received an amended Form 7530 which included information regarding the Facility's address change and installation records confirming that the material of construction for the piping associated with UST #7 is fiberglass. DEQ staff did not receive supporting documentation regarding UST #7's material of construction.
10. On August 21, 2003, DEQ staff sent Mr. Claytor an approval letter stating that he had met his financial responsibility requirements as required under 9 VAC 25-590-10 et.seq.
11. On October 2, 2003, DEQ staff met with Mr. Claytor to discuss possible remedies to the situation including a corrective action plan and the settlement of past violations.
12. On October 7, 2003, DEQ staff received documentation confirming the material of construction for UST #7.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code §§ 62.1-44.15 (8a) and

(8d), orders Mr. Claytor and Mr. Claytor agrees that:

1. Mr. Claytor shall pay a civil charge of \$500.00, within 30 days of the effective date of the Order. Payment shall be by check, certified check, money order, or cashier's check payable to ATreasurer of the Commonwealth of Virginia≡ and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

2. Mr. Claytor shall also include his Social Security Number with the civil charge payment and shall note on the payment that it is being made pursuant to this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Mr. Claytor, for good cause shown by Mr. Claytor, or on its own motion after notice and opportunity to be heard.
2. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
3. This Order is made by agreement and with the consent of the parties and does not constitute a finding, adjudication or admission of violation of any federal, state, or local law, rule, or regulation or any allegations contained herein. For the purpose of this Order only, Mr. Claytor admits the jurisdictional allegations in the Order.
4. Mr. Claytor consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Mr. Claytor declares he has received fair and due process under the Virginia Administrative Process Act, Code §§ 2.2-4000 *et seq.*, and the State Water Control Law, and he waives the right to any hearing or other administrative proceeding authorized or required by law or regulation and to judicial review of any issue of fact or

law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

6. Failure by Mr. Claytor to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall act to waive or bar the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Mr. Claytor shall be responsible for failing to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. Mr. Claytor must show that such circumstances resulting in noncompliance were beyond his control and not due to a lack of good faith or diligence on his part. Mr. Claytor shall notify the Director of the Regional Office in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
 - a. The reasons for the delay or noncompliance;
 - b. The projected duration of such delay or noncompliance;
 - c. The measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. The timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Director of the Regional Office in writing within 10 days of learning of any condition listed above, which Mr. Claytor intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and Mr. Claytor. Notwithstanding the foregoing, Mr. Claytor agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until:
- a. Mr. Claytor petitions the Regional Director to terminate the Order after it has completed all requirements of the Order and the Director or his designee approves the termination of the Order; or
 - b. The Director or the Board terminates this Order in his or its whole discretion upon 30 days written notice to Mr. Claytor

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Mr. Claytor from his obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By his signature below, Mr. Claytor voluntarily agrees to the issuance of this Order.

And it is so ORDERED this ____ day of _____, 2003.

Robert G. Burnley, Director
Department of Environmental Quality

The terms and conditions of the Order are voluntarily accepted by Mr. Claytor:

Date: _____ By: _____
Robert W. Claytor

Commonwealth of Virginia, City/County of _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2003, by

(name)

Robert W. Claytor
Consent Special Order
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Date
My commission expires:

Notary Public